IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

WP(C).No. 28900 of 2006(M)

PETITIONER:

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1. K.O. PATHROSE, AGED 62 YEARS,
S/O. DEVASSY, KALAMPARAMBIL HOUSE, KARUKUTTY P.O.,
ANGAMALY (VIA), ERNAKULAM DISTRICT.

2. SHEENA K.P., W/O. PAUL THOMAS,
AGED 32, CHATHELY HOUSE, MELOOR P.O.,
CHALAKUDY VIA.

BY ADV. SRI.JOHNSON MANAYANI
SRI.PAULSON P.V

RESPONDENTS:

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1. THE CHIEF REGISTRAR OF BIRTHS AND
DEATHS, O/O. DIRECTOR OF PANCHAYATS,
THIRUVANANTHAPURAM.

2. THE REGISTRAR OF BIRTHS AND DEATHS,
KARUKUTTY GRAMA PANCHAYATH, KARUKUTTY P.O.,
ANGAMALY VIA., ERNAKULAM DISTRICT.

3. STATE OF KERALA,
REP. BY ITS SECRETARY TO LOCAL ADMINISTRATION,
SECRETARIAT, THIRUVANANTHAPURAM.

4. SECRETARY,
KARUKUTTY PANCHAYATH, KARUKUTTY P.O.,
ANGAMALY VIA.

R2 & R4 BY ADV. SRI.V.S.CHANDRASEKHARAN
R1 & R3 BY SR.GOVT.PLEADER SRI.MATHEW G.VADAKKEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.28900 OF 2006

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DATED THIS THE 5th DECEMBER, 2006

J U D G M E N T

A father and daughter are before this Court challenging Ext.P7 order passed by the 2nd respondent, the Registrar of Births and Deaths, Karukutty Grama Panchayat declining their application for correcting the date of birth of the 2nd petitioner-daughter.

2. As directed by me, copy of the Writ Petition was served on the Standing Counsel for the 4th respondent and the Government Pleader who took notice on behalf of respondents 1 and 3.

3. Ext.P7 order itself was passed on the basis of the directions issued by this Court in Ext.P6 judgment in a Writ Petition filed by the petitioners when they found that the 2nd respondent was not taking any action on their application for correction of date of birth and also for correction of the name of the 2nd petitioner. Under Ext.P7, the request for correction of the name was allowed while the request for correction of date of birth was not allowed on the reason that the concurrence of the Chief Registrar of Births and Deaths (1st respondent) is also necessary in the matter.

4. I have heard the submissions of Sri.Johnson Manayani,

counsel for the petitioners, Sri.Chandrasekharan, Standing Counsel for the 4th respondent-Panchayat and Sri.Mathew G.Vadakkel, Government Pleader.

5. The learned Government Pleader would refer to Section 15 of the Registration of Births and Deaths Act, 1969 and also to Rule 11 of the Kerala Registration of Births and Deaths Rules, 1999 and submit that he has been instructed by the 1st respondent-Chief Registrar to say that the date of birth entered in the register is not erroneous or by mistake. The basic document for determining the correct date of birth is the Register of Births and Deaths and not the SSLC Book and Passport which are relied on by the petitioners. The entires in the Birth Register being what they are, the 1st respondent will not be justified in giving concurrence to the 2nd respondent for making the correction sought for.

6. The stand taken by the 1st respondent, in my opinion, is totally unrealistic. The case of the petitioners is that it was due to some mistake on the part of the person reporting the birth of the 2nd petitioner that the date of birth came to be entered as 20.7.1974 in the register maintained by the 2nd respondent while the correct date of birth is 14.5.1974. In all records relating to the 2nd petitioner such as

SSLC book and Passport, the date of birth stands entered as 14.5.1974 itself. The stand of the 1st respondent that the basic record is the Birth Register and therefore all other records, even if they are public records, cannot be attached any credence is too technical to receive acceptance at the hands of this Court. The Standing Counsel for the Panchayat would submit before me that the Panchayat does not dispute the correctness of the averment in the Writ Petition that the 2nd petitioner was actually born on 14.5.1974. The only difficulty for the 2nd respondent is the non-inclination of the 1st respondent to give consent or concurrence.

7. It is now to be examined whether it is necessary at all for the 2nd respondent to seek concurrence of the 1st respondent in the matter. Section 15 of the Statute reads as follows:-

> "**15. Correction or cancellation of entry in the register or births and deaths.--** If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by State Government with respect to the

conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation."

Rule 11 of the Kerala Registration of Births and Deaths Rules, 1999 is the relevant rule and the same reads as follows:-

"**11. Correction or cancellation of entry in the register of births and deaths.--** (1) If it is reported to the Registrar that a clerical or formal error has been made in the register or if such error is otherwise noticed by him the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in section 15 and shall send an extract of the entry showing the error and how it has been corrected to the State Government or the officer specified by it in this behalf.

(2) If any person asserts that any entry in the

register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under Section 15 upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

(3) Notwithstanding anything contained in sub-rule (1) and sub-rule (2), the Registrar shall make report of any correction of the kind referred to therein giving necessary details to the State Government or the officer specified in this behalf.

(4) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made, he shall make a report giving necessary details to the officer authorised by the Chief Registrar by general or special order in this behalf under Section 25 and on hearing from him take necessary action in the matter.

(5) In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent

to the permanent address of the person who has given information under section 8 or section 9."

8. Circular No.B1-19048/95 dated 27.6.1995 issued by the Director of Panchayats was pressed into service by Mr.Manayani. The Circular which has been issued in supersession of an earlier circular is to the effect that with effect from 27.6.1995 (the date of the Circular) permission of the Chief Registrar for making correction in entries regarding date of birth of persons need be insisted only when the difference between the date shown in the register and in the corresponding school records exceeds one year. It should be noticed that in the instant case the difference between the two dates, i.e., 14.5.1974 and 20.7.1974, is only two months. Therefore, on the terms of the Circular, the concurrence of the 1st respondent will not even be necessary for the 2nd respondent to grant the correction applied for. Moreover, it should be noticed that the 2nd petitioner does not stand to gain anything by obtaining the correction she presently seeks. She rather stands to lose two months. I am fully convinced that this is a case where the petitioners are only bona fide seeking correction of the 2nd petitioner's date of birth in the register maintained by the 2nd respondent so that the same will conform to the correct date

of birth which has been entered in the educational records and other public documents such as passport.

The result is that the Writ Petition will stand allowed. It is declared that the correct date of birth of the 2nd petitioner is 14.5.1974, that the entries given in Ext.P1 birth certificate is incorrect and that those entries are liable to be corrected from 20.7.1974 to 14.5.1974. Ext.P7, to the extent it declines the correction of 2nd petitioner's date of birth from 20.7.1974 to 14.5.1974, is quashed.

(PIUS C. KURIAKOSE, JUDGE)

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